

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

ORDER AFFIRMING REPORT AND RECOMMENDATION

This habeas corpus action filed by a state prisoner appearing pro se was referred to United States Magistrate Judge Valerie K. Couch consistent with 28 U.S.C. § 636(b)(1)(B). Judge Couch entered a Report and Recommendation on July 6, 2005, recommending the Petition be dismissed as untimely, and Petitioner has timely filed her Objection. The Court therefore considers the matter de novo.

In the Report and Recommendation, Judge Couch sets out the facts regarding the time line of this case which are undisputed by Petitioner. The conviction for which Petitioner seeks relief was final on January 18, 1994; she filed this action on April 1, 2005, over nine years after the finality of her conviction and almost seven years after the expiration of the AEDPA's statute of limitations. See 28 U.S.C. §§ 2244(d)(1)(A) and (d)(2). In her Objection, Petitioner merely reiterates the inability to timely receive transcripts and other paperwork pertaining to her case, all of which was originally asserted in a letter to Judge

Couch filed on June 1. This attempt to justify a seven-year delay is not sufficient to present a rare and exceptional circumstance for which equitable tolling would apply.

Accordingly, the Court adopts, in its entirety, the Report and Recommendation of the Magistrate Judge, and for the reasons stated therein, this action is dismissed, as untimely. Because no amendment can cure the defect in the pleading, this acts as an adjudication on the merits, and a judgment will enter.

IT IS SO ORDERED this 25th day of July, 2005.



ROBIN J. CAUTHRON
United States District Judge